



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

SHERMAN D. PAYNE-EL,
Petitioner,

vs.

MATTHEW HAMIDULLAH, Warden,
FCI-Estill, and UNITED STATES PAROLE
COMMISSION,
Respondents.

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CIVIL ACTION NO. 9:05-00868-HFF-GCK

AMENDED ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE AND DISMISSING THE ACTION *WITHOUT PREJUDICE* AND
WITHOUT REQUIRING RESPONDENTS TO FILE AN ANSWER

I. INTRODUCTION

This case was filed as a Section 2241 action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court dismiss the action *without prejudice* and without requiring Respondents to file an answer. The Report is made in accordance with 28 U.S.C. § 636 and Local Rule 73.02 for the District of South Carolina.

II. THE REPORT

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court.

Matthews v. Weber, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made; and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on April 18, 2005, and Petitioner filed his objections on April 29, 2005. The Court has carefully considered Petitioner's objections but finds them to be without merit. Therefore, for the reasons set forth in the Magistrate Judge's well-reasoned Report, the Court will dismiss the action *without prejudice*.

III. CONCLUSION

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report, and incorporates it herein. Accordingly, it is the judgment of this Court that the petition must be **DISMISSED** *without prejudice* and without requiring Respondents to file an answer.

IT IS SO ORDERED.

Signed this 10th day of January, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.